IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 1:86-cv-275-RLV

DE LONG EQUIPMENT COMPANY,

Plaintiff,

v.

WASHINGTON MILLS ABRASIVE CO.,
WASHINGTON MILLS CERAMIC CORP.,
JOHN T. WILLIAMS, and PETER WILLIAMS,

Defendants.

DEFENDANTS' REQUEST TO CHARGE NO. 16

I charge you that a vertical restraint of trade is not illegal per se under Section 1 of the Sherman Act unless it includes some agreement on resale price or price levels. An agreement between a manufacturer and one of its dealers or distributors to terminate another dealer because of that dealer's price cutting is not per se illegal unless the first dealer (in other words, the non-terminated distributor) expressly or impliedly agrees to set its resale prices at some level.

AUTHORITY: *Business Electronics Corp. v. Sharp Electronics*, 485 U.S. 717, 108 S.Ct. 1515, 99 L.Ed.2d 808 (1988).

Respectfully submitted,

/s/ Paul Webb, Jr.
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/s/ Phillip S. Coe
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DEFENDANTS' REQUEST TO CHARGE NO. 17

Even if you find that DeLong's termination was the result of an agreement between Washington Mills and BCS, this is insufficient to establish liability. In order for an agreement between a manufacturer and a dealer to terminate a second dealer to be per se illegal, such termination must be pursuant to a resale price maintenance agreement—that is, the first dealer must expressly or impliedly agree to set its resale prices at some level. So long as the first dealer (in this case, BCS) retains complete freedom to set whatever prices its chooses, there is no illegality, even if the terminated dealer was terminated for the purpose of reducing price competition.

AUTHORITY: *Business Electronics Corp. v. Sharp Electronics*, 780 F.2d 1212 (5th Cir. 1986), *aff'd* 485 U.S. 717, 108 S.Ct. 1515, 99 L.Ed.2d 808 (1988).

Respectfully submitted,

/s/ Paul Webb, Jr.
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/s/ Phillip S. Coe
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Defendants.

DEFENDANTS' REQUEST TO CHARGE NO. 18

In order to establish liability under Section 1 of the Sherman Act, it is not enough for your to find that there was an agreement between Washington Mills and its distributor, BCS, on the price that Washington Mills would charge to distributors for its Pratt & Whitney special media. In order to be unlawful, there must be an agreement as to the price at which *BCS* would *resell* the products in question. In the absence of such an agreement restricting *resale* prices, there can be no violation and, in that event, your verdict would be for the defendants.

AUTHORITY: *Business Electronics Corp. v. Sharp Electronics Corp.*, 485 U.S. 717 (1984); *Sitkin Smelting & Refining Co. v. FMC Corp.*, 575 F.2d 440, 446 (3rd Cir. 1978), *cert. denied*, 439 U.S. 866 (1978); and authorities cited in Section I, C of Memorandum of Washington Mills Defendants With Regard Vertical Price-Fixing And The Requirement That An Essential Element Of An Action Under Sher-

man 1 Is The Proof Of A Resale Price Fix, filed July 20, 1990.

Respectfully submitted,

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